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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,176	04/21/2000	Kentaro Kawakami	000549	6524

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT PAPER NUMBER

1722

12

DATE MAILED: 09/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-12

Office Action Summary

Application No.

09/557,176

Applicant(s)

KAWAKAMI ET AL.

Examiner

Thu Khanh T. Nguyen

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 5 recites the limitation "the ring-shaped lid member" in line 1. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination, the ring-shaped lid member is assumed to be the same with the ring-shaped member. Clarification and/or correction are required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Baird (2,218,804).

Baird teaches a plastic forming apparatus comprising an open-top negative mold (Fig. 2, 1), a ring-shaped lid member (39) with the inside diameter smaller than the top diameter of the negative mold, a cylindrical rotary trowel (12) which is mechanically fixed to move against an inner surface of the negative mold, and is longer than the height of an inner wall surface of the vessel body to be formed (2), and a trowel drive (9; page 1, line 50 – page 2, line 5).

Claim Rejections - 35 USC § 103

Art Unit: 1722

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baird ('804) in view of Ritter (2,293,172).

Baird discloses a molding apparatus as described above, but fails to disclose a split mold and a stand for fitting the negative mold.

Ritter discloses an apparatus for forming flowerpots, comprising a split negative mold (Fig. 2, 47), a ring-like lid member (45), a cylindrical rotary trowel (57) which is mechanically fixed to move against an inner surface of the mold and is longer than the height of an inner surface of the pot body, a trowel drive (Fig. 1, 11-29), and a shave stand (44) for fitting the mold. The lid member (45) is integrally fixed to the shave stand and the split mold halves (Fig. 2) by the screws (48).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Baird by providing a split mold and a shave stand as taught by Ritter because using the split mold would facilitate the removal of the product after being molded and the shave stand would provide support to the mold.

8. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baird ('804) as applied to claim 4 above, and further in view of Ryckman (4,286,938).

Baird ('804) discloses a pot forming apparatus as described above, but fails to disclose a turntable to rotate the mold.

Ryckman discloses an apparatus for forming oval dish, comprising a rotary trowel (64), a mold (37) rotatable about its central axis, a shave stand (36) and a support table (22) rotatable about the axis of

Art Unit: 1722

the mold (Fig. 5) by a shaft (28) in the same direction of the rotary trowel (col. 4, lines 53-55) at about the same speed (col. 2, lines 6-11).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Baird ('804) by providing a turntable as taught by Ryckman, because the turntable would obviously rotate the mold in the same direction of the rotary trowel to provide better contacting between the mold and the trowel during the molding process.

In regard to claim 10, it would have been obvious to one of ordinary skill in the art to adjust the rotation speed of the mold or the trowel depending on the size of the trowel relative to the size of the mold, so that the product would be pressed evenly throughout the interior and exterior surfaces.

9. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baird ('804) as applied to claim 4 above and further in view of Andersen et al (5,658,603).

Baird ('804) discloses a pot forming apparatus as described above, but fails to disclose a shave stand and drive means for rotating the negative mold.

Andersen et al disclose a molding apparatus for forming cylindrical article, comprising a negative mold (Fig. 11A-C, 102) that fixed on a shave stand (the support member around the mold 102) and rotates in the same direction of the rotatable trowel (100; col. 53, lines 3-12).

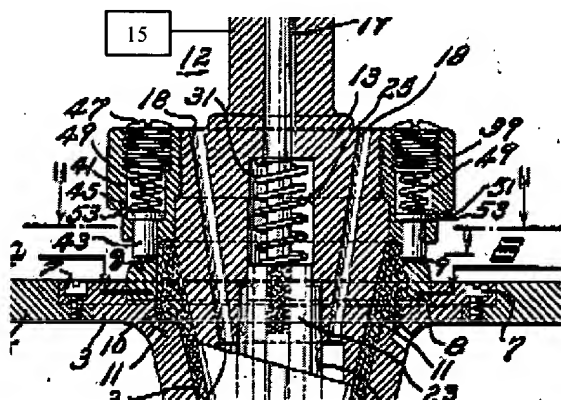
It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Baird by using a shave stand and drive means for rotating the mold of Andersen et al because these means are known to reduce processing time.

Response to Arguments

Art Unit: 1722

10. Applicant's arguments filed June 20, 2002 have been fully considered but they are not persuasive. The Applicants have repeatedly argued that Baird ('804) fails to disclose a cylindrical rotary trowel and the ring-like member (39) is a trimmer ring and is not the same as the ring-shaped member as claimed.

The examiner respectfully disagrees. A copy of Baird's apparatus is inserted here for the purpose of discussion.



As one can clearly see, the trowel 12 includes a cylindrical body 13 and an elongated shank 15 extending from the upper end of the body for securing the trowel into the chuck (col. 2, line 50 to col. 3, line 5).

Even though the cylindrical body 13 has a tapered portion 17 corresponding to the shape of the mold, the trowel 12, as a whole, does have a cylindrical shape.

In regard to the trimmer ring 39, this ring is located on top of a wear ring (8), which is located on top of a mold portion 3. Because the trimmer ring 39 and the wear ring 8 form the upper portion of the product, these rings are parts of the mold. Further, the inside diameter of the ring, where the ring connected to the trowel body 13, is smaller than an open top diameter of the mold portion 3. Therefore, Baird does disclose all the structure limitations as claimed in the current claim 4.

Ritter was cited to show the split mold is well known in the art, and it would have been obvious to one of ordinary skill in the art to incorporate the split mold into the teaching of Baird in order to facilitate the product removal from the mold.

The rejection of claims 7 and 9 over Baird ('804) in view of Baird ('946) has been withdrawn because the claims have been amended and the rejection is no longer applicable. However, these claims

Art Unit: 1722

are rejected over Baird ('804) in view of Ryckman ('938), in which Ryckman discloses a mold being supported by a turntable that is rotatable in the same direction with the trowel at a predetermined speed.

Regarding to the shape of the trowel, it is in the scope of an artisan to recognize a proper shape that would work better for a particular mold shape. Therefore, by claiming a particular shape of the trowel would not make an apparatus claim patentable over the prior art, if the trowel performs the same functions compared to that of the prior art. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23 and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

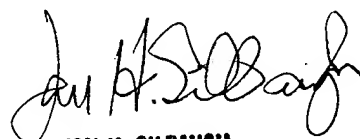
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 703-305-7167. The examiner can normally be reached on Monday-Thursday and on alternate Friday, 6:30-4:00.

Art Unit: 1722

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan H. Silbaugh can be reached on 703-308-3829. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN
September 3, 2002


JAN H. SILBAUGH
SUPERVISORY PATENT EXAMINER
ART UNIT ~~137~~ 1722

09/09/02